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IN THE HIGH COURT OF KARNATAKA AT BANGALORE

Dated this the 30th day of June 1998

BEFORE

THE HON' BLE MR. JUSTICE M.F. SALDANHA

WRIT PETITION NO. 19104/1998

Between:

1. Sri. Mallappa
Son of Veerbhadrappa Kadi,
major, Occ. Agriculture, r/o
Keshapur, Tq. Muddebihal,
District Bijapur.

360

2. Sri. Parutappa
Son of Sangappa Kadi,
major, rest -do-

... Petitioners.

(By Sri Vighneshwara S. Shastri, Advocate).

And:

1. The State of Karnataka
represented by its Secretary
to Government, Revenue
Department, M.S. Building,
Bangalore-560 003.

2. The Land Tribunal,
Muddebihal, Taluka Mudde-
bihal, District Bijapur,
by its Chairman.

3. Smt. Saraswathibai wife
of Sangappa Deshmukh,
major, r/o Keshapur, Tq.
Muddebihal, Dist. Bijapur.

4. Sri. Sangappa son of
Channabasappa Deshmukh,
major, Occ. Agriculture, r/o
Keshapur, Tq. Muddebihal,
District Bijapur.

... Respondents.

(By Smt. M. R. Shantha Kumari, HCGP, for R -1 & 2).

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This W.P. is filed under Articles 226 & 227 of the Constitution of India praying to quash Annexure-C dt.24-4-76 issued by respondent No.2, etc.

This W.P. coming on for preliminary hearing this day, the Court made the following:-

O R D E R

I have heard the petitioner's learned Advocate and the learned Government Advocate. It is unnecessary to serve respondents 3 and 4 because this Court is only remanding the proceeding to the Tribunal with a direction that all the concerned parties be served with notice and that the case be heard *denovo*.

2. Once again, the contention is that the Tribunal has wrongly rejected the application for grant of occupancy rights. That order was passed in the year 1976 and ^{the} usual vague statements are put in that the petitioner was unaware of the order until somebody *is supposed* ~~steps~~ to have tried to disturb the petitioner's possession. Thus it is clear that the last set of statements are inherently false. The fact of the

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362

matter is that if the Court were to refuse to entertain the Petition the result would be gross injustice. Also, there is a ^{lapse} ~~delay~~ on the part of the Tribunal in so far as the steps as required under Section 48A-6 ^{e not} ~~having~~ been taken and this Court has recently directed the Tribunals to ensure that a copy of the order is served on each party and ^{an} ~~acknowledgement~~ taken.

3. The petitioners learned Advocate has prima facie satisfied me of ~~the~~ facts that the petitioners have a case for consideration, in so far as certain documents have been produced which do make out a prima facie case for ^{re} ~~con-~~ sideration. Also, ~~the~~ cryptic order passed in 1976 proceeds on a wrong footing viz., merely because, the name of the Court Receiver appears, that the petitioners are not entitled to ^{the} ~~grant~~ of occupancy rights. The impugned order is accordingly

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363

set aside. The Tribunal is directed to issue notice to the parties considering the materials produced and after hearing the parties to pass fresh orders according to law. The Petition accordingly succeeds. No order as to costs.

Sd/-
JUDGE



rsk